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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)
LIBERTY PRODUCTIONS,)
A LIBERTY PARTNERSHIP)
Et. Al.)
For Construction Permit for)
New FM Channel 243A)
Biltmore Forest, North Carolina)

MM Docket No. 88-577
File No. 870831MI

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To: The Commission

MOTION FOR LEAVE TO FILE OUT OF TIME

Liberty Productions, a Limited Partnership ("Liberty") by counsel hereby moves for leave to file its attached Opposition to Motion to Enlarge Issues one day beyond the time allotted by 47 CFR 1.45. In support whereof the following is shown:

Orion Communications Limited ("Orion") filed its Motion to Enlarge Issues on November 12, 1999, the same day that Biltmore Forest FM, Inc. ("BFBFM") filed its Motion to Enlarge. However, while undersigned counsel for Liberty received a copy of BFBFM's Motion on November 15, 1999, no copy of Orion's Motion had been received as of November 17, 1999. Thereafter, counsel for Liberty was out of the office from November 18th until November 24, 1999. Thus, counsel for Liberty did not become aware of Orion's Motion until November 24, 1999, too late to prepare and file a timely opposition. The attached Opposition was promptly prepared and is being timely served, although it is being filed

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one day beyond the deadline, due to the intervening Thanksgiving holiday and need to file by overnight courier.

Accordingly, Liberty contends that good cause is shown for acceptance of its Opposition one day beyond the due date and requests that its Opposition be accepted and considered.

Respectfully Submitted

LIBERTY PRODUCTIONS,
A LIBERTY PARTNERSHIP

By: 

Timothy K. Brady
Its Attorney

P.O. Box 71309
Newnan, GA 30271-1309

November 29, 1999

Before the
Federal Communications Commission
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LIBERTY PRODUCTIONS,)	File No. BPH-870831MI
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New FM Channel 243A		
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To: The Commission

OPPOSITION TO MOTION TO ENLARGE ISSUES

Liberty Productions, a Limited Partnership ("Liberty") by counsel herewith submits its opposition to the Motion to Enlarge Issues filed by Orion Communications Limited ("Orion") on November 12, 1999 in the above referenced proceeding. In support whereof the following is shown:

1. Orion seeks enlargement of the issues to determine whether Liberty made misrepresentations to the Commission regarding its entitlement to the new entrant bidding credit. Orion premises its request on the undisputed fact that David Murray, Liberty's sole limited partner, holds a 50% interest in the licensee of an FM radio station. Orion does not dispute the fact that Murray is a properly insulated limited partner nor does it deny that Liberty is in strict conformity with the nonattribution criteria set forth in 47 CFR 73.3555 and Note 2, thereto. Instead, Orion contends that Murray's 65% limited

partnership interest in Liberty is attributable, on the theory that it exceeds 33% of Liberty's total asset value (equity plus debt). As will be demonstrated, Orion's argument is based upon a faulty premise and must fail, because Murray's interest in Liberty does not exceed 33% of Liberty's total asset value, as defined in 47 CFR 73.5008(c), as amended, and is nonattributable.

2. Orion alleges that Liberty failed to disclose Murray's interest in the licensee of WLJQ(FM). While it is true that the referenced interest was not mentioned in Liberty's short form application, Murray's interest in that station had previously been disclosed to the Commission in this proceeding.

3. Information concerning Murray's media interest was omitted from Liberty's short form application because the instructions provided by the Commission indicated that such information was not required to be submitted. In that regard, the instructions included in Attachment B to DA 99-1346, released July 9, 1999, provide that with respect to "partnership applicants", such as Liberty, ownership information need not be provided with regard to any limited partner who is "not involved in the management and operation of the media related activities of the partnership". Thus, Liberty was not required to provide any information regarding Murray or his media interests in its short form application. Instead, it was required to submit a certification to support the nonattribution of Murray's interest, which it included in both Exhibits A and C. Those certifications clearly reflected a claim of nonattribution as to Murray's

interest and, thus, obviated a need to submit any information regarding Murray's media interest.

4. Orion argues that Liberty failed to furnish complete and accurate information in order to permit the Commission to properly determine its entitlement to the new entrant bidding credit and that, as a result, the Commission accorded Liberty credit it did not deserve. However, Orion points to no evidence, whatsoever, that would suggest that any of the information provided by Liberty was inaccurate and Liberty remains unaware of any inaccuracy.

5. To the extent that Orion argues that the information Liberty provided was incomplete, Liberty acknowledges that the information provided was not exhaustive. However, as discussed above, Liberty provided the information called for by Form 175 and the Commission's instructions set forth in DA 99-1346. It was not required to provide information concerning Murray's media interests because Murray's interest in Liberty was nonattributable. It provided the certifications called for by the instructions. While it did not include in its short form application a certification specifically addressing the fact that Murray's interest did not exceed 33% of Liberty's total asset value, such a certification was not required. ¹/ Nevertheless,

1. FCC 99-201, released August 5, 1999 did not amend 47 CFR 1.2105 or otherwise modify the certification requirements.

a certification to that effect was included in Liberty's November 10, 1999 amendment to its above referenced Application.

6. Contrary to Orion's contention, Liberty was entitled to the new entrant bidding credit it received, because Murray's interest in Liberty is nonattributable. As reflected in the attached Declaration of Valerie Klemmer Watts, Liberty's sole general partner, ²/ prior to filing Liberty's short form application on August 19, 1999, she determined that Murray's equity interest in Liberty did not exceed 33% of Liberty's total asset value, as defined in 47 CFR 73.5008(c), as amended. More specifically, Murray's paid-in equity totaled less than \$ 36,000.00, while Liberty's total asset value (paid-in equity plus debt) totaled more than \$ 120,000.00. See Exhibit A, hereto. As such, Murray's interest in Liberty represented less than 30% of its total asset value and, thus, was nonattributable, pursuant to 47 CFR 73.5008(c). ³/

7. While Orion focuses upon Murray's 65% partnership interest, it must be emphasized that 65% is simply the percentage at which Murray shares in the profits and losses of the

2. A copy of the Declaration is attached as Exhibit A, hereto. The original is being submitted in support of Liberty's Opposition to Motion to Enlarge, filed November 26, 1999.

3. Pursuant to 47 CFR 73.5007, a "recognizable" interest" is one that equals more than 50%. Murray holds only a 50% interest in the licensee of an FM station. Therefore, his media interest would not constitute a "recognizable interest" for purposes of determining Liberty's entitlement to the new entrant credit, even if his interest in Liberty were attributable.

partnership and, thus, bears no correlation to the percentage his interest represents of total asset value. It is rather the total amount of paid-in equity in the form of capital or other assets contributed to the partnership, as well as any debt interest, that is to be included in the calculation, not the percentage at which a principal shares in profits and losses. The Commission made clear in adopting the 33% threshold that its focus was to attribute the media interests of "substantial investors" who because of their significant financial participation had "a realistic potential" to influence the applicant. See: FCC 99-201 at paragraphs 6-7. For purposes of 47 CFR 73.5008(c), a "significant" financial participation one which is greater than 33% of the applicant's total asset value. Here, Murray's financial participation represents less than 30% of total asset value. As such, it is not "significant" and, thus, nonattributable.

8. Orion's Motion is based entirely upon the erroneous premise that Murray's interest in Liberty exceeds 33% of Liberty's total asset value, as defined in 47 CFR 73.5008. Because the fundamental premise of its argument is erroneous, it has failed to establish a prima facie case to support the enlargement of the issues it seeks. Accordingly, its Motion should be denied.

WHEREFORE, premises considered, the Motion to Enlarge

Issues, filed by Orion should be DENIED.

Respectfully Submitted

LIBERTY PRODUCTIONS,
A LIBERTY PARTNERSHIP

By: 

Timothy K. Brady
Its Attorney

P.O. Box 71309
Newnan, GA 30271-1309

November 29, 1999

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this Handwritten
day of November, 1999, served a copy of the foregoing Motion for
Leave to File Out of Time and Opposition to Motion to Enlarge
Issues by First Class mail, postage prepaid upon the following:

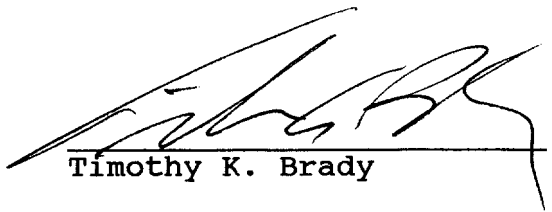
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